

Congressional Budget Resolutions: Consideration and Amending in the Senate

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Summary

Title III of the Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, 2 U.S.C. 601-688) (“the Budget Act”), as amended, provides for the adoption of an annual concurrent resolution on the budget (“budget resolution”) by Congress. The Budget Act includes provisions governing the consideration and amending process of the budget resolution, such as establishing points of order, setting time limits on certain motions, amendments, and the budget resolution itself, and restricting the content of amendments.

This report highlights some of the Budget Act’s budget resolution provisions, and how they play out on the Senate floor during consideration and amending. One notable subject that this report addresses is the “vote-arama,” or the period when the Senate disposes of amendments after the time for debate on the resolution has expired. In addition to Budget Act provisions, this report also includes examples of when the Senate has utilized unanimous consent agreements to further structure floor procedure.

Introduction

Title III of the Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344, 2 U.S.C. 601-661) (“the Budget Act”), as amended, provides for the adoption of an annual concurrent resolution on the budget by Congress. The budget resolution establishes the levels of revenues, spending, the surplus or deficit, and the public debt for each year covering the upcoming fiscal year and at least four additional years (“out-years”) to be enacted through subsequent legislation. This report does not discuss the enforcement of those levels or committee allocations.¹

This report will outline the most significant provisions contained within the Budget Act that affect the consideration and amending of budget resolutions in the Senate. With only a few exceptions, these Budget Act provisions are enforced by points of order. Because points of order are not self-enforcing (not automatically triggered), enforcement requires that a Senator raise a point of order against the consideration of the budget resolution or an amendment. In the event that no point of order is raised, the budget resolution or amendment is presumed to be within the limits prescribed by the Budget Act.

After a Senator raises a Budget Act point of order against an amendment, the Senator offering the amendment may make a motion to waive the point of order. Most Budget Act points of order may be waived by a vote of at least three-fifths of all Senators duly chosen and sworn (60 votes if there are no vacancies).² If three-fifths of Senators vote to adopt the motion to waive the point of order, the Senate can then hold a vote on the amendment itself. If three-fifths of Senators do not vote in favor of the motion to waive the point of order, the point of order is sustained and the amendment falls. Few Budget Act points of order are raised during the consideration of budget resolutions, and, of those, even fewer are waived.³

Consideration of a budget resolution is privileged, meaning the motion for the Senate to proceed to consideration of a budget resolution is nondebatable.⁴ For most other measures, a motion to proceed to their consideration is debatable. Section 301(a) of the Budget Act prescribes the content required for this the budget resolution, and is discussed below.⁵

¹ For more on the budget process generally, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith. For more on the relationship of the budget resolution to other budgetary measures, see CRS Report R40472, *The Budget Resolution and Spending Legislation*, by Megan Suzanne Lynch.

² See CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno and CRS Report 98-306, *Points of Order, Rulings, and Appeals in the Senate*, by Valerie Heitsch.

³ In a search of the *Congressional Record*, only three examples were found in which the Senate agreed to waive a Budget Act point of order. Please see Senate debate, *Congressional Record*, vol. 138 (April 9, 1992), p. 8753; vol. 143 (May 23, 1997), p. 9502; and daily edition, vol. 155 (April 2, 2009), p. S4274.

⁴ Although it is not explicit in the Budget Act, the budget resolution is privileged. See, for example, U.S. Congress, Senate, *Riddick's Senate Procedure, Precedents and Practices*, by Floyd M. Riddick and Alan S. Frumin, 101st Cong., 2nd sess., S.Doc. 101-28 (Washington: GPO 1992), p. 600 and Senate debate, *Congressional Record*, vol. 127 (May 12, 1981), p. 9455.

⁵ During consideration of the FY2009 and FY2010 budget resolutions, several questions arose regarding whether amendments could change the contents of the resolution sufficient to be “fatally corrosive” to its privileged status. Although the presiding officer stated that such action was possible, it remains unclear what types of action would remove the budget resolution’s privileged status. See Senate debate, *Congressional Record*, daily edition, vol. 154 (March 13, 2008), pp. S2053 and S2071; and daily edition, vol. 155 (April 2, 2009), p. S4294.

Managing Time During Consideration of a Budget Resolution

Section 305(b)(1) of the Budget Act limits total debate time in the Senate on budget resolutions to 50 hours.⁶ It provides that the majority and minority leaders or their designees, normally the chair and ranking member of the Budget Committee, manage the time. It further specifies that the 50 hours of debate is equally divided and controlled so that both the majority and minority managers have 25 hours each, and they in turn can yield time to other Senators. Debate, debatable motions, appeals, and amendments are included in the 50 hours. Time used for quorum calls is counted toward the 50 hours, but roll call votes are not.⁷ Because the limit is specifically applied to debate, consideration may sometimes extend beyond the 50-hour limit. After the 50 hours expires (or remaining time is yielded back), Senators may continue to consider the budget resolution and offer further amendments, motions, and appeals, but with no time provided for debate.

In practice, the Senate often uses unanimous consent agreements to conduct business in a way divergent from the provisions of 305(b). For example, in lieu of recognizing the real time running on the clock, the Senate has sometimes agreed by unanimous consent at the end of a day to consider a specific amount of time on the resolution as remaining, regardless of the actual amount of time used to that point.⁸ Similarly, the Senate may choose a specific day and time at which the debate time on the budget resolution will be deemed expired.⁹

Section 305(b)(3) also provides that, after opening statements, up to four hours may be designated for Senate debate on economic goals and policies. Although the Senate does not normally explicitly reserve time for debating economic goals and policies during debate on the budget resolution, Senators may informally discuss economic goals and policies before the resolution is even brought to the floor, often during a period of morning business in the days leading up to the beginning of initial consideration, or Senators offer commentary during the leaders' time for opening statements.¹⁰ Sometimes the Senate agrees through unanimous consent to postpone the offering of amendments, thereby effectively reserving a block of time for general debate. For example, a unanimous consent agreement might provide that, once the resolution is brought up, amendments are not in order until the following day's session, or until after an afternoon recess.¹¹

⁶ Section 305(c) also provides that debate on a conference report be limited to 10 hours.

⁷ Quorum call time is charged to the Senator or manager suggesting the absence of a quorum, unless otherwise agreed to through unanimous consent. Time for quorum calls is treated the same as under unanimous consent agreements. See *Riddick's Senate Procedure*, p. 606 "Debate," and p. 1066, "Unanimous Consent Agreement—Effect on Quorum Calls."

⁸ See Senate debate, *Congressional Record*, vol. 151 (March 11, 2005), p. S2505; daily edition, vol. 155 (March 30, 2009), p. S3977.

⁹ See Senate debate, *Congressional Record*, vol. 147 (April 5, 2001), pp. 5609-5611.

¹⁰ See Senate debate, *Congressional Record*, daily edition, vol. 151 (March 11, 2005), p. S2505.

¹¹ See Senate debate, *Congressional Record*, vol. 140 (March 22, 1994), p. 5844; daily edition, vol. 154 (March 10, 2008), p. S1814.

Managing Time During the Budget Resolution Amending Process

General Time Provisions

The Budget Act contains provisions that specifically govern the process for amending the budget resolution. These provisions supplement the general principles and practices of the Senate pertaining to the amendment process.¹²

Section 305(b)(2) of the Budget Act limits Senate debate on an amendment to the resolution to two hours. Time on each amendment counts against the total 50 hours. The two hours are divided between and managed by the mover of the amendment and the manager of the budget resolution. In the event that both the mover of the amendment and the manager are both proponents of the amendment,¹³ the time in opposition is controlled by the minority manager. If neither manager yields time, the time used by the recognized Senator will be taken equally from both sides.¹⁴ In practice, the time used on amendments is often charged equally to both sides.

Section 305(b)(2) also provides that a manager can yield additional time to a Senator. A Senator may reserve time on a pending amendment, particularly in situations in which consideration of the amendment is temporarily set aside by unanimous consent. However, even if a Senator has reserved a portion of the amendment's time, the expiration of the total 50 hours on the resolution would supersede this. Section 305(b)(2) also provides that debate on any amendment to an amendment, debatable motion, or appeal is limited to one hour. Quorum calls during the consideration of an amendment to the budget resolution are taken from the amendment's time, unless otherwise agreed to through unanimous consent.¹⁵

In practice, the Senate also uses unanimous consent agreements to modify the Section 305(b)(2) time limits or further structure the amendment process. Frequently used unanimous consent requests involve the Senate agreeing to expedite voting by scheduling amendment votes at particular times, in a particular order, limiting second-degree amendments, or some combination thereof.¹⁶

Vote-arama

Section 305(b)(1) of the Budget Act limits total Senate debate on the budget resolution to 50 hours, but the Senate has not always disposed of all amendments by the expiration of that time. This first occurred during consideration of the FY1994 budget resolution in 1993, when the

¹² For more information on general amending in the Senate, see CRS Report 98-853, *The Amending Process in the Senate*, by Betsy Palmer; CRS Report 98-707, *Senate Amendment Process: General Conditions and Principles*, by Walter J. Oleszek.

¹³ The presiding officer has, in at least one instance, inquired of the manager whether he supported or opposed an amendment. See *Riddick's Senate Procedure*, p. 590 and Senate debate, *Congressional Record*, vol. 131 (May 10, 1985), p. 11476.

¹⁴ See *Riddick's Senate Procedure*, p. 591 and Senate debate, *Congressional Record*, vol. 128 (May 20, 1982), p. 10892.

¹⁵ See Senate debate, *Congressional Record*, vol. 125 (September 19, 1979), pp. 24797-24803.

¹⁶ Examples, see Senate debate, *Congressional Record*, vol. 145 (March 25, 1999) pp. 5798-5799; vol. 147 (April 5, 2001), pp. 5609-5611.

statutory time expired during the fifth day of consideration.¹⁷ After some discussion, the Senate tabled the next nine amendments and entered into a unanimous consent agreement that any amendments not disposed of by noon the following day (excepting any amendment being considered at noon) would not be in order, and all votes after the initial vote would be limited to 15 minutes. The following day, some amendments were tabled but five were agreed to. This marked the first instance of what would later become known as “vote-arama.”¹⁸

Vote-arama is not a formal procedure, but instead a description of a practice, developed through custom, of agreeing to some form of accelerated voting procedure to address amendments not yet disposed of or offered when the 50 hours has expired. The practice is so named because the agreements usually produce a succession of back-to-back votes. In recent years, the primary unanimous consent agreements setting up a vote-arama have taken a relatively consistent form: a set list and order of amendments to be voted upon, a two minute explanation allowed for each amendment (1 minute per side), a ten minute vote on each amendment, and a directive that any additional amendments not be in order. The unanimous consent agreements can become quite complex, often listing the order of amendments, deadlines for offering amendments, time limitations for each, organizing votes en bloc, and specifying timelines for completion.¹⁹

Since the advent of vote-aramas, the Senate has disposed of all amendments before the expiration of time in only two years—1994 and 2004. Between 1993 and 2009, an average of 78 amendments to the budget resolution were offered per year during floor consideration, with an average of 26 (33%) of those being debated and disposed of before the expiration of time. An average of 17 (22%) of amendments were offered, and presumably debate begun, before the expiration of time, but were pending when time expired and subsequently disposed of after the expiration of time. An average of 35 (45%) amendments were offered and disposed of after the expiration of time.²⁰

Put another way, during the years of 1993 to 2009, about one-third of all amendments were disposed of before time expired, and about two-thirds were disposed of after time expired as part of the vote-arama. Many examples exist in the record of Senators expressing their frustration toward the vote-arama process. In February of 2009, the Senate Budget Committee held a hearing called “Senate Procedures for Consideration of the Budget Resolution/Reconciliation,” during which committee members sought information about the vote-arama process and potential possibilities for adjustment or reform.²¹

Content of the Resolution

Section 301(a) of the Budget Act specifies that the budget resolution must contain the following elements for the upcoming fiscal year (“budget year”) and at least the next four out-years: totals of new budget authority and outlays, total federal revenues, the budget surplus or deficit, new budget authority and outlays for each major functional category, and the public debt.²² Senate

¹⁷See Senate debate, *Congressional Record*, vol. 139 (March 23, 1993), p. 6207.

¹⁸ Other iterations of this informal term used in the Senate are, for example, “vote-a-rama” and “vote-athon.”

¹⁹ Example, see Senate debate, *Congressional Record*, vol. 146 (April 6, 2000), pp. 4889, 4994-5000.

²⁰ More data on vote-aramas can be found in a CRS memoranda available on the “Hearings” page of the website for the Senate Budget Committee, <http://www.budget.senate.gov>, February 12, 2009.

²¹ See <http://www.budget.senate.gov> for more information on the content of this hearing.

²² The budget resolution may include additional out-years. For example, the budget resolutions for FY2002 and FY2004 included amounts for nine out-years. U.S. Congress, House of Representatives, Concurrent Resolution on the Budget for Fiscal Year 2002, conference report to accompany H.Con.Res. 83, 107th Cong., 1st sess., May 8, 2001,

enforcement also requires figures for outlays and revenues under the Old-Age, Survivors, and Disability Insurance program established under the Social Security Act. The Budget Act further specifies that neither the outlays nor the revenues from the Social Security program should be included in the budget resolution's overall surplus or deficit totals.

Section 301(b) provides for other elements that may be included in the budget resolution, such as reconciliation instructions, or establishing procedures for adjusting committee allocations. Section 301(b)(4) is known as the "elastic clause" and permits the inclusion of other matters or procedures deemed appropriate to carry out the Budget Act. Section 301(g) provides that any reconciliation instructions included in a budget resolution must not affect Social Security.

Point of Order Against a Budget Resolution Using More Than One Set of Economic Assumptions

Section 301(g) of the Budget Act creates a point of order against the Senate considering a budget resolution that utilizes more than one set of economic assumptions, and amendments that cause the budget resolution to use more than one set of economic assumptions—that is, the technical assumptions such as economic growth or inflation that are used to make budget projections.

It is rare that a Senator would offer an amendment that would result in the budget resolution using more than one set of economic assumptions. One instance in which this point of order was raised against an amendment occurred during the consideration of the FY1988 budget resolution.²³ The chair of the Senate Budget Committee proposed an amendment that would substitute the Office of Management and Budget (OMB) budget estimates for the purposes of complying with deficit targets while the rest of the budget assumptions were based upon the Congressional Budget Office (CBO) estimates. However, when a second Senator made a point of order, the presiding officer ruled the point of order to be not well taken. Because Section 312 of the Budget Act provides that budget estimates shall be provided by the Senate Budget Committee, the presiding officer stated that he had to rely on the estimates provided to him by the Budget Committee chair. The second Senator's attempt to appeal the ruling of the chair was not successful. Ultimately, the Senate voted to adopt the amendment, and later voted to adopt the budget resolution conference report.

Social Security Point of Order

In addition to the requirement that Social Security figures be separately presented, Section 301(i) of the Budget Act creates a point of order against the Senate considering a budget resolution, or an amendment to a budget resolution, which causes a decrease of the Social Security surplus. This point of order is not frequently raised, but has been discussed on the Senate floor.²⁴

H.Rept. 107-60, p. 1; U.S. Congress, House of Representatives, Concurrent Resolution on the Budget for Fiscal Year 2004, conference report to accompany H.Con.Res. 95, 108th Cong., 1st sess., April 10, 2003, H.Rept. 108-71, p. 1.

²³ See Senate debate, *Congressional Record*, vol. 133 (April 28, 1987), p. 10086.

²⁴ See Senate debate, *Congressional Record* (April 1, 1998), p. 5469.

Content of Amendments

Point of Order Against Non-Germane Amendments

Section 305(b)(2) of the Budget Act provides for a point of order against non-germane amendments. This has been the most common point of order raised against budget resolution amendments. In fact, this provision accounts for all sustained Budget Act points of order during budget resolution consideration in the past 10 years.

Determining whether an amendment is “germane” can prove difficult, and is decided on a case-by-case basis. A non-germane amendment generally is one that would introduce new subject matter not present in the underlying resolution. The primary factor in determining germaneness is the strength of the relationship between the amendment’s subject and the text of the underlying resolution.²⁵

On Amendments Having the Purpose of Ensuring Mathematical Consistency

Section 305(b)(6) of the Budget Act, unlike most Budget Act provisions that restrict the type or form or time of an amendment, instead provides that, notwithstanding any other rule of limitation on the amending process, it is in order to offer an amendment for the purpose of ensuring mathematical consistency. This rule applies even when the amendment might otherwise be out of order—for example, offering an amendment that would re-amend already amended text would normally be out of order, but should be held in order if its purpose is to ensure mathematical consistency. Additionally, if a complete substitute to a budget resolution is adopted, amendments that ensure mathematical consistency that were previously adopted are still in order.²⁶ Section 305(d) further provides that it is out of order for the Senate to vote on agreeing to a budget resolution unless the figures contained in it are mathematically consistent.

This rule can be distinguished from Section 301(g)—“economic assumptions” refers to the different methods that can be utilized to calculate budget projections, but “mathematical consistency” refers only to whether the actual computation of figures is mathematically sound.

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²⁵ For a general discussion of germaneness and examples, see *Riddick’s Senate Procedure*, “Germaneness of Amendments,” p. 854. In addition, the FY2001 budget resolution conference report provided that amendments containing “predominately precatory language” would be deemed non-germane, effectively including “sense of” amendments in the definition of amendments not germane to the budget resolution, but the enforceability of this definition is unclear.

²⁶ See *Riddick’s Senate Procedure* p. 592 and Senate debate, *Congressional Record*, vol. 128 (May 20, 1982), p. 11037; vol. 125 (September 18, 1979), pp. 24965-24966.

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